

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34867

GENERAL RAILWAY CORPORATION, D/B/A IOWA NORTHWESTERN
RAILROAD—EXEMPTION FOR ACQUISITION OF RAILROAD LINE—IN OSCEOLA AND
DICKINSON COUNTIES, IA

Decided: May 25, 2006

This decision grants a housekeeping stay of the effective date of the exemption in this proceeding.

BACKGROUND

Through a notice of exemption filed in General Railway Corporation d/b/a Iowa Northwestern Railroad Corporation—Operation Exemption—Line of Dickinson Osceola Railroad Association, STB Finance Docket No. 34037 (STB served and published May 11, 2001), General Railway Company (GRC), d/b/a Iowa Northwestern Railroad, acquired a right to operate over an approximately 37.21-mile line of railroad owned by the Dickinson Osceola Railroad Association (DORA), extending from current milepost 215.00 at a point west of Superior, IA, to milepost 252.30 at a point west of Allendorf, IA, in Dickinson and Osceola Counties.¹

By decision served on April 10, 2006, the Board granted GRC an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to discontinue operations over a portion of the line described above,² subject to employee protective conditions.³ Although GRC had filed for abandonment authority, the Board explained in its decision that it could not grant GRC abandonment authority because GRC had not previously obtained authorization from the Board to buy the line. Rather, GRC had received authorization from the Board only to acquire the right to operate over the line. As a result, the Board could grant GRC only authority to discontinue service over the portion of the line that GRC sought to abandon.

¹ On May 8, 2006, DORA filed a petition to revoke the exemption which gave GRC the right to operate over the subject line. This matter will be addressed in a subsequent Board decision.

² GRC sought to abandon 17.05 miles of the rail line extending from milepost 235.25 near Lake Park, IA, to the end of the line at milepost 252.30 near Allendorf, IA.

³ See Iowa Northwestern Railroad—Abandonment Exemption—In Osceola and Dickinson Counties, IA, STB Finance Docket No. AB-1067 (Sub-No. 1X) (STB served Apr. 10, 2006).

On May 19, 2006, GRC filed a verified notice of exemption under 49 CFR 1150.31 for Board authority to acquire the subject line. GRC states that it purchased the line from DORA in November 2001, and that it was GRC's responsibility to obtain permission from the Board to acquire and operate the line. GRC further indicates that, because of mistake and inadvertence, it obtained authority to operate the line but did not obtain authority to acquire it.

On May 23, 2006, DORA and Iowa Central Railroad Company (ICR) jointly filed a petition to reject or revoke the verified notice of exemption filed by GRC or, in the alternative, to stay the effective date of the exemption pending the Board's full consideration of the pleadings in this proceeding. They contend that the notice does not describe a transaction subject to 49 CFR 1150.41, does not meet the requirements of 49 CFR 1150.41, and is materially false and misleading. DORA and ICR argue that they will suffer irreparable harm if the Board does not grant the stay because allowing the exemption to become effective will confuse the status of the portion of the line for which the Board has already granted GRC a discontinuance exemption and will intrude upon the province of the courts in a pending court case involving the respective rights of the parties as to certain contractual issues.

On May 25, 2006, GRC filed a reply opposing the relief sought by DORA and ICR.

DISCUSSIONS AND CONCLUSIONS

A housekeeping stay of the effective date of the exemption is appropriate to provide sufficient time for the Board to fully consider the issues presented in the stay request. Thus, the exemption will be stayed until further order of the Board.

In addition, while GRC filed its notice of exemption to acquire the line as a noncarrier under 49 CFR 1150.31, GRC acknowledges in its reply that the notice would properly be filed under 49 CFR 1150.41 because GRC is now a rail carrier after having obtained authority to operate the line in 2001. GRC is directed to file an amended notice of exemption under 49 CFR 1150.41 instead of 49 CFR 1150.31. The amended notice of exemption will be subject to the housekeeping stay and cannot take effect until further order of the Board.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The effective date of the exemption in this proceeding is stayed until further order of the Board.
2. GRC is directed to file an amended notice of exemption under 49 CFR 1150.41 seeking Board authority to acquire the subject line and that exemption will be subject to this housekeeping stay and cannot take effect until further order of the Board.

3. This decision is effective on its date of service.

By the Board, W. Douglas Buttrey, Chairman.

Vernon A. Williams
Secretary